

IN THE SENATE

SENATE BILL NO. 1040

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO GRANTING AN EMPLOYEE'S REQUEST FOR VOLUNTARY LEAVE OF ABSENCE, TO ESTABLISH PROVISIONS RELATING TO THE DELEGATION OF AUTHORITY TO PLACE AN EMPLOYEE ON AN INVOLUNTARY LEAVE OF ABSENCE, TO PROVIDE FOR RATIFICATION OF CERTAIN ACTION, TO ESTABLISH PROVISIONS RELATING TO AN INVOLUNTARY LEAVE OF ABSENCE WITHOUT PAY, TO ESTABLISH PROVISIONS RELATING TO AN INVOLUNTARY LEAVE OF ABSENCE WITH PAY, TO ESTABLISH PROVISIONS RELATING TO DUAL COURT ORDERS, TO MAKE A CODIFIER'S CORRECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-514, IDAHO CODE, TO REVISE A DATE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-515, IDAHO CODE, TO REVISE A DATE, TO REVISE PROVISIONS RELATING TO A CONTRACT AUTOMATICALLY RENEWED, TO REMOVE LANGUAGE RELATING TO RENEWING A CONTRACT AT A REDUCED RATE, TO ESTABLISH PROVISIONS RELATING TO AN INFORMAL REVIEW IF THE BOARD DETERMINES TO CHANGE CERTAIN TERMS OF A CONTRACT, TO MAKE A CODIFIER'S CORRECTION AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-513, Idaho Code, be, and the same is hereby amended to read as follows:

33-513. PROFESSIONAL PERSONNEL. The board of trustees of each school district, including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. Should the board of trustees fail to enter into written contract for the employment of any such person, the state superintendent of public instruction shall withhold ensuing apportionments until such written contract be entered into. When the board of trustees has delivered a proposed contract for the next ensuing year to any such person, such person shall have a period of time to be determined by the board of trustees in its discretion, but in no event less than ten (10) days from the date the contract is delivered, in which to sign the contract and return it to the board. Delivery of a contract may be made only in person or by certified mail, return receipt requested. When delivery is made in person, delivery of the contract must be acknowledged by a signed receipt. When delivery is made by certified mail, delivery must be acknowledged by the return of the certified mail receipt from the person to whom the contract was sent. Should the person willfully refuse to acknowledge receipt of the contract or the contract is not signed and returned to the board in the designated period of time, the board may declare the position vacant.

1 The board of trustees shall withhold the salary of any teacher who does
 2 not hold a teaching certificate valid in this state. It shall not contract
 3 to require any teacher to make up time spent in attending any meeting called
 4 by the state board of education or by the state superintendent of public in-
 5 struction; nor while attending regularly scheduled official meetings of the
 6 state teachers' association.

7 2. In the case of school districts other than elementary school dis-
 8 tricts, to employ a superintendent of schools for a term not to exceed three
 9 (3) years, who shall be the executive officer of the board of trustees with
 10 such powers and duties as the board may prescribe. The superintendent shall
 11 also act as the authorized representative of the district whenever such is
 12 required, unless some other person shall be named by the board of trustees to
 13 act as its authorized representative. The board of trustees shall conduct
 14 an annual, written formal evaluation of the work of the superintendent of
 15 the district. The evaluation shall indicate the strengths and weaknesses of
 16 the superintendent's job performance in the year immediately preceding the
 17 evaluation and areas where improvement in the superintendent's job perfor-
 18 mance, in the view of the board of trustees, is called for.

19 3. To employ through written contract principals who shall hold a valid
 20 certificate appropriate to the position for which they are employed, who
 21 shall supervise the operation and management of the school in accordance
 22 with the policies established by the board of trustees and who shall be under
 23 the supervision of the superintendent.

24 4. To employ assistant superintendents and principals for a term not
 25 to exceed two (2) years. Service performed under such contract shall be in-
 26 cluded in meeting the provisions of section 33-515, Idaho Code, as a teacher
 27 and persons eligible for a renewable contract as a teacher shall retain such
 28 eligibility.

29 5. To suspend, grant leave of absence, place on probation or discharge
 30 certificated professional personnel for a material violation of any lawful
 31 rules or regulations of the board of trustees or of the state board of edu-
 32 cation, or for any conduct which could constitute grounds for revocation of
 33 a teaching certificate. Any certificated professional employee, except the
 34 superintendent, may be discharged during a contract term under the following
 35 procedures:

36 (a) The superintendent or any other duly authorized administrative of-
 37 ficer of the school district may recommend the discharge of any certifi-
 38 cated employee by filing with the board of trustees written notice spec-
 39 ifying the alleged reasons for discharge.

40 (b) Upon receipt of such notice the board, acting through ~~their~~ its duly
 41 authorized administrative official, shall give the affected employee
 42 written notice of the allegations and the recommendation of discharge,
 43 along with written notice of a hearing before the board prior to any de-
 44 termination by the board of the truth of the allegations.

45 (c) The hearing shall be scheduled to take place not less than six (6)
 46 days nor more than twenty-one (21) days after receipt of the notice by
 47 the employee. The date provided for the hearing may be changed by mutual
 48 consent.

49 (d) The hearing shall be public unless the employee requests in writing
 50 that it be in executive session.

(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board, may administer oaths to witnesses or affirmations by witnesses.

(f) The employee may be represented by legal counsel and/or by a representative of a local or state teachers association.

(g) The chairman of the board or the designee of the chairman shall conduct the hearing.

(h) The board shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board upon request of the employee.

(i) At the hearing, the superintendent or other duly authorized administrative officer shall present evidence to substantiate the allegations contained in such notice.

(j) The employee may produce evidence to refute the allegations. Any witness presented by the superintendent or by the employee shall be subject to cross-examination. The board may also examine witnesses and be represented by counsel.

(k) The affected employee may file written briefs and arguments with the board within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employee and the board.

(l) Within fifteen (15) days following the close of the hearing, the board shall determine and, acting through ~~their~~ its duly authorized administrative official, shall notify the employee in writing whether the evidence presented at the hearing established the truth of the allegations and whether the employee is to be retained, immediately discharged, or discharged upon termination of the current contract.

6. To grant an employee's request for voluntary leave of absence. The board of trustees may delegate authority to grant an employee's request for voluntary leave of absence to the district's superintendent or other designee. Upon the superintendent or designee's grant of an employee's request for voluntary leave of absence, the board shall ratify or nullify the action at the next regularly scheduled board meeting.

7. To delegate to the superintendent or other designee the authority to place any employee on a period of involuntary leave of absence should the superintendent or designee believe that such action is in the best interest of the district. Upon the superintendent or designee's action to place an employee on a period of involuntary leave of absence, the board shall ratify or nullify the action of the superintendent or designee at the next regularly scheduled meeting of the board or at a special meeting of the board should the next regularly scheduled meeting of the board not be within a period of twenty-one (21) days from the date of the action.

(a) Should an employee of the district be in a position where there is a criminal court order preventing the employee from being in the presence of minors or students, preventing the employee from being in the presence of any other adult individual employed at the school or the employee being detained in prison or jail, the employee's involuntary leave of absence shall be without pay due to the employee's inability to perform the essential functions of the employee's position. Without

1 such a condition or situation, the involuntary leave of absence shall be
 2 with pay.

3 (b) Should there be dual court orders preventing more than one (1) em-
 4 ployee from being in the presence of one (1) or more other employees, all
 5 employees subject to the court order shall be excluded from the school
 6 pursuant to subsection 7. (a) of this section.

7 SECTION 2. That Section 33-514, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 33-514. ISSUANCE OF ANNUAL CONTRACTS -- SUPPORT PROGRAMS -- CATE-
 10 GORIES OF CONTRACTS -- OPTIONAL PLACEMENT. (1) The board of trustees shall
 11 establish criteria and procedures for the supervision and evaluation of
 12 certificated employees who are not employed on a renewable contract, as pro-
 13 vided for in section 33-515, Idaho Code.

14 (2) There shall be three (3) categories of annual contracts available
 15 to local school districts under which to employ certificated personnel:

16 (a) A category 1 contract is a limited one-year contract as provided in
 17 section 33-514A, Idaho Code.

18 (b) A category 2 contract is for certificated personnel in the first and
 19 second years of continuous employment with the same school district.
 20 Upon the decision by a local school board not to reemploy the person
 21 for the following year, the certificated employee shall be provided a
 22 written statement of reasons for non-reemployment by no later than ~~May~~
 23 25 the first day of July. No property rights shall attach to a category 2
 24 contract and therefore the employee shall not be entitled to a review by
 25 the local board of the reasons or decision not to reemploy.

26 (c) A category 3 contract is for certificated personnel during the
 27 third year of continuous employment by the same school district. Dis-
 28 trict procedures shall require at least one (1) evaluation prior to
 29 the beginning of the second semester of the school year and the re-
 30 sults of any such evaluation shall be made a matter of record in the
 31 employee's personnel file. When any such employee's work is found to
 32 be unsatisfactory, a defined period of probation shall be established
 33 by the board, but in no case shall a probationary period be less than
 34 eight (8) weeks. After the probationary period, action shall be taken
 35 by the board as to whether the employee is to be retained, immediately
 36 discharged, discharged upon termination of the current contract or
 37 reemployed at the end of the contract term under a continued probation-
 38 ary status. Notwithstanding the provisions of sections 67-2344 and
 39 67-2345, Idaho Code, a decision to place certificated personnel on pro-
 40 bationary status may be made in executive session and the employee shall
 41 not be named in the minutes of the meeting. A record of the decision
 42 shall be placed in the employee's personnel file. This procedure shall
 43 not preclude recognition of unsatisfactory work at a subsequent evalu-
 44 ation and the establishment of a reasonable period of probation. In all
 45 instances, the employee shall be duly notified in writing of the areas
 46 of work which are deficient, including the conditions of probation.
 47 Each such certificated employee on a category 3 contract shall be given
 48 notice, in writing, whether he or she will be reemployed for the next en-
 49 suing year. Such notice shall be given by the board of trustees no later

1 than the ~~twenty-fifth day of May~~ first day of July of each such year.
 2 If the board of trustees has decided not to reemploy the certificated
 3 employee, then the notice must contain a statement of reasons for such
 4 decision and the employee shall, upon request, be given the opportunity
 5 for an informal review of such decision by the board of trustees. The
 6 parameters of an informal review shall be determined by the local board.

7 (3) School districts hiring an employee who has been on renewable con-
 8 tract status with another Idaho district, or has out-of-state experience
 9 which would otherwise qualify the certificated employee for renewable con-
 10 tract status in Idaho, shall have the option to immediately grant renewable
 11 contract status, or to place the employee on a category 3 annual contract.
 12 Such employment on a category 3 contract under the provisions of this subsec-
 13 tion may be for one (1), two (2) or three (3) years.

14 (4) There shall be a minimum of two (2) written evaluations in each of
 15 the annual contract years of employment, and at least one (1) evaluation
 16 shall be completed before January 1 of each year. The provisions of this
 17 subsection ~~(4)~~ shall not apply to employees on a category 1 contract.

18 SECTION 3. That Section 33-515, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) During the third full
 21 year of continuous employment by the same school district, including any
 22 specially chartered district, each certificated employee named in subsec-
 23 tion (16) of section 33-1001, Idaho Code, and each school nurse and school
 24 librarian shall be evaluated for a renewable contract and shall, upon having
 25 been offered a contract for the next ensuing year, having given notice of
 26 acceptance of renewal and upon signing a contract for a fourth full year, be
 27 placed on a renewable contract status with said school district subject to
 28 the provisions included in this chapter.

29 (2) After the third full year of employment and at least once annu-
 30 ally, the performance of each such certificated employee, school nurse, or
 31 school librarian shall be evaluated according to criteria and procedures
 32 established by the board of trustees in accordance with general guidelines
 33 approved by the state board of education. Except as otherwise provided,
 34 that person shall have the right to automatic renewal of contract by giving
 35 notice, in writing, of acceptance of renewal. Such notice shall be given
 36 to the board of trustees of the school district then employing such person
 37 not later than the first day of June preceding the expiration of the term
 38 of the current contract. Except as otherwise provided by this ~~paragraph~~
 39 subsection, the board of trustees shall notify each person entitled to be
 40 employed on a renewable contract of the requirement that such person must
 41 give the notice hereinabove and that failure to do so may be interpreted by
 42 the board as a declination of the right to automatic renewal or the offer of
 43 another contract. Such notification shall be made, in writing, not later
 44 than the ~~fifteenth day of May~~ first day of July, in each year, except to those
 45 persons to whom the board, prior to said date, has sent proposed contracts
 46 for the next ensuing year, or to whom the board has given the notice required
 47 by this section.

48 (3) Any contract automatically renewed under the provisions of this
 49 section ~~shall be for the same length as the term stated in the current con-~~

tract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, service, or performance, except where a board of trustees has declared a financial emergency pursuant to section 33-522, Idaho Code may be renewed for a shorter term, longer term or the same length of term as stated in the current contract and at a greater, lesser or equal salary as that stated in the current contract.

(4) Nothing in this section shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

(5) Before a board of trustees can determine not to renew for reasons of an unsatisfactory report of the performance of any certificated person whose contract would otherwise be automatically renewed, ~~or to renew the contract of any such person at a reduced salary,~~ such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

(6) If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, ~~or to renew the contract of any such person at a reduced salary,~~ the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

(7) If the board of trustees takes action after the declaration of a financial emergency pursuant to section 33-522, Idaho Code, and such action is directed at more than one (1) certificated employee and, if mutually agreed to by both parties, a single informal review shall be conducted. Without mutual consent of both parties, the board of trustees shall use the following procedure to conduct a single due process hearing within sixty-seven (67) days of the declaration of financial emergency pursuant to section 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

1 (a) The superintendent or any other duly authorized administrative of-
2 ficer of the school district may recommend the change in the length of
3 the term stated in the current contract or reduce the salary of any cer-
4 tificated employee by filing with the board of trustees written notice
5 specifying the purported reasons for such changes.

6 (b) Upon receipt of such notice, the board of trustees, acting through
7 its duly authorized administrative official, shall give the affected
8 employees written notice of the reductions and the recommendation of
9 the change in the length of the term stated in the current contract or
10 the reduction of salary, along with written notice of a hearing be-
11 fore the board of trustees prior to any determination by the board of
12 trustees.

13 (c) The hearing shall be scheduled to take place not less than six (6)
14 days nor more than fourteen (14) days after receipt of the notice by the
15 employees. The date provided for the hearing may be changed by mutual
16 consent.

17 (d) The hearing shall be open to the public.

18 (e) All testimony at the hearing shall be given under oath or affirma-
19 tion. Any member of the board, or the clerk of the board of trustees, may
20 administer oaths to witnesses or affirmations by witnesses.

21 (f) The employees may be represented by legal counsel and/or by a repre-
22 sentative of a local or state education association.

23 (g) The chairman of the board of trustees or the designee of the chair-
24 man shall conduct the hearing.

25 (h) The board of trustees shall cause an electronic record of the hear-
26 ing to be made or shall employ a competent reporter to take stenographic
27 or stenotype notes of all the testimony at the hearing. A transcript of
28 the hearing shall be provided at cost by the board of trustees upon re-
29 quest of the employee.

30 (i) At the hearing, the superintendent or other duly authorized admin-
31 istrative officer shall present evidence to substantiate the reduction
32 contained in such notice.

33 (j) The employees may produce evidence to refute the reduction. Any
34 witness presented by the superintendent or by the employees shall be
35 subject to cross-examination. The board of trustees may also examine
36 witnesses and be represented by counsel.

37 (k) The affected employees may file written briefs and arguments with
38 the board of trustees within three (3) days after the close of the hear-
39 ing or such other time as may be agreed upon by the affected employees
40 and the board of trustees.

41 (l) Within seven (7) days following the close of the hearing, the board
42 of trustees shall determine and, acting through its duly authorized ad-
43 ministrative official, shall notify the employees in writing whether
44 the evidence presented at the hearing established the need for the ac-
45 tion taken.

46 The due process hearing pursuant to this subsection ~~(7)~~ shall not be required
47 if the board of trustees and the local education association reach an agree-
48 ment on issues agreed upon pursuant to section 33-522(3), Idaho Code.

49 (8) If the board of trustees, for reasons other than unsatisfactory
50 service, for the ensuing contract year, determines to change the length of

1 the term stated in the current contract, reduce the salary or not renew the
2 contract of a certificated person whose contract would otherwise be automat-
3 ically renewed, nothing herein shall require a probationary period.

4 (9) If the board of trustees, for reasons other than unsatisfactory
5 service, for the ensuing contract year, determines to change the length
6 of the term stated in the current contract or reduce the salary of a cer-
7 tificated person whose contract would otherwise be automatically renewed,
8 nothing herein shall require any individualized due process proceeding. In
9 such circumstance, the board shall hold a single informal review for all im-
10 pacted employees. The process and procedure for the single informal review
11 shall be determined by the local board of trustees.

12 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
13 to be severable and if any provision of this act or the application of such
14 provision to any person or circumstance is declared invalid for any reason,
15 such declaration shall not affect the validity of the remaining portions of
16 this act.

17 SECTION 5. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval.